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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 74-1459

SAN DIEGO BUILDING CONTRACTORS ASSOCIATION ET AL.,
Appellants,

v.

CITY COUNCIL OF THE CITY OF SAN DIEGO,
Appellee.

APPELLANTS' SUPPLEMENTAL BRIEF

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June 22, 1976

WILSON - EPES PRINTING CO., INC. - RE 7-6002 - WASHINGTON, D. C. 20001

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APPELLANTS' SUPPLEMENTAL BRIEF

Pursuant to Rule 16(5) of this Court's Rules, the appellants in the above-entitled case submit this supplemental brief to discuss the effect on this case of the Court's decision in *City of Eastlake* v. *Forest City Enterprises, Inc.*, No. 75-1563, decided on June 21, 1976.

In *Eastlake*, the Court held that a city charter provision requiring proposed land use changes, or rezoning, to be approved by the voters of the city through a referendum did not violate the due process rights of a landowner who applied for a beneficial zoning change in his land use. In reaching that conclusion, the Court stated:

> "The situation presented in this case is not one of a zoning action denigrating the use or depreciating the value of land; instead, it involves an effort to *change* a reasonable zoning restriction. No existing

> rights are being impaired; new use rights are being sought from the City Council. Thus, this case involves an owner seeking approval of a new use free from the restrictions attached to the land when it was acquired." (Slip op. at 10 n.13.)*

Thus, the Court did not clearly decide whether a referendum or other voting procedure would violate the Due Process Clause if it were used to impose new land use restrictions denigrating an existing land use and thereby impairing existing rights, rather than simply to prohibit a landowner's effort to change existing restrictions to allow a new use of his land.

The present case presents that unresolved question. Here, the voters by initiative imposed a 30-foot building-height limitation on the property of a discrete group of landowners within a particular zone whose land use was not previously subject to such restriction. That vote thus substantially restricted the pre-existing use to which those property owners could put their land, thereby reducing the value of their land, and hence manifestly impaired their pre-existing property interests and rights. The appellants' jurisdictional statement in this case squarely presents the issue whether such imposition of new land use restrictions by vote, rather than merely the denial of a proposed land use change by vote, violates the Due Process Clause.

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* Likewise, the Court noted that there was "no contention in this case that the existing zoning classification renders respondent's property valueless or otherwise diminishes its value below the value when respondent acquired it" (slip op. at 5 n.8).

Respectfully submitted,

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